

**Marc Spence, OSB#87349  
Attorney at Law  
747 Willamette Street  
Eugene, OR 97401  
(541) 343-9909**

**Attorney for Defendant**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON**

UNITED STATES OF AMERICA, )  
Plaintiff, ) Case No. CR 03-60105-01-HO  
vs. )  
EXHIBITS 1 THROUGH 5  
BRONEY GADMAN, ) SENTENCING MEMORANDUM  
Defendant. ) AND MOTION TO POSTPONE

COMES NOW Defendant, and submits Exhibits 1 through 5, attached hereto, to

accompany Defendant's Sentencing Memorandum and Motion to Postpone.

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DATED THIS 22 day of August, 2008.



Marc A. Spence, OSB#87349

26

**SPENCE  
&  
SABITT**

747 Willamette St.  
Eugene, OR 97401  
541-343-9909  
Fax 343-0014

Your Reference: 570/1646060303/TECH/MEG

Our Ref: QP/B/010

Date: 18<sup>th</sup> July 2008

5

Mr M Grooms  
H M Revenue & Customs  
Local Compliance Individuals & Public Bodies  
Eastbrook  
Shaftesbury Road  
Cambridge  
CB2 8QJ

Dear Mr Grooms,

M R Cagan

Thank you for your letter of 9 July 2008. I would comment as follows.

1. I regret that I am unable to reconcile Mr Cagan's disposal with the completion statement supplied by Harvey Ingram. This was the reason I approached the purchasing company for details of the monies paid for the shares.
2. I understand from Mr Gladman that the monies were transferred to the UK attorneys and would not appear on Mr Cagan's bank statements.
3. The 50% taper relief was on the basis that Mr Cagan had been an employee of the company for three years. In our discussion of 14 July 2001 you expressed doubt over the duration of the employment, I therefore enclose a copy of the information lodged at Companies House, which shows he was a director between 20 July 1999 and 7 September 2001. I have not yet checked to see if he was an employee before 20 July 1999.

As you also indicated that you would be referring the matter to Shares Valuation for an acquisition value, I enclose copies of the company accounts covering the period March 1997 to December 2001 together with a summary of the position.

Between April 1998 and September 2001 it appears that the company:

- a. Moved from an operating profit of £169910 to an operating loss of £530572
- b. Moved from a profit before taxation of £108,194 to a loss before taxation of £760,841
- c. The capital & reserves fell from a surplus of £783,396 to a deficit of £552,923

In view of the above, it is highly likely that Shares Valuation will value the shares higher on acquisition than disposal and consequently there will be no capital gain. If this is the case then the question of taper relief will become irrelevant and I would be asking you to accept a nil gain nil loss position.

As a consequence of recent developments, I feel that I can no longer recommend the proposals contained in my letter of 16 June 2008.

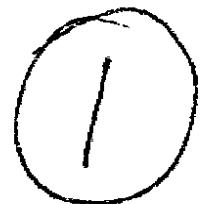
Should you wish to discuss any aspect of this letter, please feel free to telephone

Yours sincerely,

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G Patrick  
Director of Tax Investigation and Support Services.

Exhibit 1 Page 2



New York Bapet Company Limited

05-29-2008 12:28

6317321160

	Restated					
	12 Months Ended 27/03/1998	12 months Ended 28/03/1999	12 Months Ended 31/03/2000	12 Months Ended 31/03/2000	12 Months Ended 30/03/2001	9 Months Ended 25/12/2001
Turnover	8972916	10146743	7338536	7178838	9171672	5609059
Gross profit	2197563	2633796	2309839	1736130	2298233	1266421
Operating Profit	168810	29658	-75861	-109274	-150533	-530572
Profit Before Taxation	108194	-77935	-163349	-239785	-286794	-780841
Retained Loss For year	-4893	125082	-215837	-248850	-380082	-720057
Capital & Reserves	783995	711201	547852	413712	127918	-852923

Exhibit \_\_\_\_\_ Page 3

3910256



Brown Butler  
Apsley House  
78 Wellington Street  
Leeds  
LS1 2JT

12 AUG 2008

Local Compliance  
Default  
Eastbrook  
Shaftesbury Road  
Cambridge  
CB2 8DJ

Tel 01223 442506  
Mon to Fri 8.30 to 17.00

Fax 01223 442471

Email 01223 442471

Date 7 August 2008  
Our ref 570/1648080303/TECH/MEG  
Your ref GP/B1010

[www.hmrc.gov.uk](http://www.hmrc.gov.uk)

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Dear Mr Patrick

M R Cagan

Thank you for your letter dated 18 July 2008.

I referred your comments regarding the valuation of Mr Cagan's shares in the New York Bagel Co Ltd to my colleagues at Shares Valuation Division. I will let you know their opinion on the matter in due course.

I have revisited Mr Cagan's letter dated 15 February 2008 to Mr Wharrell and note that it indicates that Mr Gadman put conditions on his offer in 1998, to give 10% of the stock in the New York Bagel Co Ltd to Mr Cagan. Please let me have full details of the oral agreement reached between Mr Cagan and Mr Gadman along with copies of any documentation held to support what was orally agreed.

The company accounts that you forwarded indicate that Mr Cagan's loan account was overdrawn during 2001/2002 and that no interest was charged by the company. Please let me have your calculation of the benefit arising.

Yours sincerely

M. C. Groom

Mark Groom  
HM Inspector of Taxes

Information is available in large print, audio and Braille formats.  
Type Talk service prefix number - 18001



Assistant Director (PTC): Ted Hitchcock

Our Ref: GP/B1010

Date: 14<sup>th</sup> August 2008



Mr B Gadman  
98 Pineview LN  
Coram  
New York  
11727 - 5113  
USA

Dear Mr Gadman,

Further to our recent telephone conversation where you asked for my opinion on a number of matters, I would comment as follows:

H M Revenue & Customs Letter of 7 August 2008

In the final paragraph of the Revenue's letter, the Inspector is asking about the benefit on an overdrawn loan account. As the only benefits declared by Mr Cagan's on his tax return are for living accommodation and a company car, I suspect that the Inspector believes that Mr Cagan may not have made a full return of all his assessable employment income.

Shares Valuation

It is my opinion that the accounts show the performance and hence the value of the New York Bagel Co. Limited fell dramatically during Mr Cagan's period of stewardship. Consequently I am maintaining that there is no capital gain on the disposal of the shares by Mr Cagan.

If you wish to discuss any aspect of this letter, please feel free to telephone.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'G Patrick'.

G Patrick  
Director of Tax Investigation and Support Services.

### Exhibit 3

Apsley House 78 Wellington Street, Leeds LS1 2JT

Tel: 0113 246 1234 Fax: 0113 242 3714 Email: [info@brownbutler.com](mailto:info@brownbutler.com) Website: [www.brownbutler.com](http://www.brownbutler.com)

PARTNERS: R M Sulyon BA (Hons) FCA ATII J W Breatr ACA D Cross FCA M M Dearnley CCA S J Hornshaw ACA J R White MA (Hons) ACA

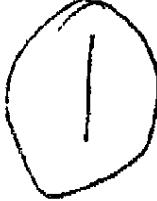
Consultants: I H Gurney FCA D W Holday BSc FCA CF

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An independent member of the International Federation of Accountants

Our Ref: GP/B1010

Date: 20<sup>th</sup> August 2008



Mr B Gadman  
98 Pineview LN  
Conam  
New York  
11727 - 5113  
USA

Dear Mr Gadman,

Further to our telephone conversation this afternoon, I enclose for your information:

1. A copy of the Revenue's letter of 9 July 2008.
2. A copy of my response of 16 July 2008.
3. A copy of the Revenue's letter of 7 August 2008.

My submission is that:

1. You promised Mr Cagan 10% of the equity of the company when you were both resident in the USA and prior to him taking up the position.
2. Section 28 CGTA 1992 makes it clear that the acquisition takes place at the time the contract is made. I reproduce the appropriate section below:

**S28: Time of disposal and acquisition where asset disposed of under contract**

(1) Subject to section 22(2), and subsection (2) below, where an asset is disposed of and acquired under a contract the time at which the disposal and acquisition is made is the time the contract is made (and not, if different, the time at which the asset is conveyed or transferred).

(2) If the contract is conditional (and in particular if it is conditional on the exercise of an option) the time at which the disposal and acquisition is made is the time when the condition is satisfied.

Therefore the shares had a value at the time of the agreement.

3. The accounts of the New York Bagel Company Limited, which are a matter of public record, show a decline in the value of the Company during Mr Cagan's period of stewardship and therefore the shares must have been worth less on disposal.
4. Consequently the argument to H M Revenue & Customs is that there was no capital gain on the disposal of the shares by Mr Cagan.

Apsley House, 78 Wellington Street, Leeds LS1 2JT

Tel: 0113 248 1234 Fax: 0113 242 3714 Email: [info@brownbutler.com](mailto:info@brownbutler.com) Website: [www.brownbutler.com](http://www.brownbutler.com)

PARTNERS: R M Goyen BA (Hons) FCA ATII J W Bresl ACA D Green FCA M M Dearley FCA B J Hornshaw ACA J R White MA (Hons) ACA  
Consultants: T P Gurney FCA D W Hodder BSC FCA FR

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08-20-2008 10:19 6317521160 Participant member of DFK International, a worldwide association of independent accounting firms

**Exhibit 4**

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5. Finally, the final paragraph of the Revenue's letter of 7 Aug 1st 2006 is now challenging the accuracy of Mr Cagan's return. If it is established that Mr Cagan has not made a full return of all his income the Inspector is likely to find that he has been negligent and this may hinder the resolution of the matter.

If you wish to discuss any aspect of this letter, please feel free to telephone.

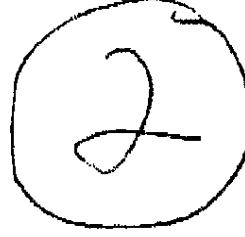
Yours sincerely,



G Patrick  
Director of Tax Investigation and Support Services

Exhibit 4 Page 2

Subject: Cagan - tax assessment  
From: Chris Saul <Chris.Saul@HarveyIngram.com>  
Date: Wednesday, August 20, 2008 1:05 pm  
To: llzbroney@optonline.net



Broney

I refer once again to the above matter and, as you are aware, over the past few months I have been assisted in the resolution of the dispute by Graeme Patrick, director of Tax Investigation and Support Services at a highly reputable firm of Chartered Accountants based in Leeds, England.

Graeme was chosen as he had spent a large part of his career, over 25 years, working within the Inland Revenue with a good deal of that time spent as an Inspector of Taxes. Graeme's expertise is proving to be invaluable with regard to the communications with the Revenue and he has been able to assess all information and evidence that has been made available to him in respect of Mr Cagan's tax assessment.

It has become clear from Graeme's investigations and the further financial information obtained from Companies Registry that the original tax return made by Mr Cagan was inaccurate and, amongst other things, gave a misleading value for the New York Bagel Co Limited shares which is believed to be much lower than that set out in the tax return. The apparent error in the return means that no capital gain would be payable from the disposal of the shares by Mr Cagan.

Other apparent errors in the tax return have been raised by the Revenue which may be relevant to Mr Cagan's tax liability and Graeme will continue to press for there being no liability at all under the original assessment.

No doubt these are issues you will wish to raise with the US Court and, as always, I am available to speak to Judge Hogan directly if clarification is required on any of the above points.

Regards

Chris Saul  
Partner  
Dispute Resolution Team  
Harvey Ingram LLP

T: +44 (0) 116 254 5454  
F: +44 (0) 116 255 3338  
E: [chris.saul@harveyingram.com](mailto:chris.saul@harveyingram.com)  
W: [www.harveyingram.com](http://www.harveyingram.com)

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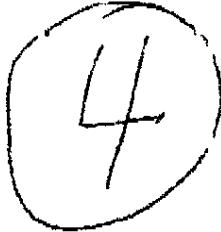
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<https://webmail.optimum.net/print.html>

Exhibit 5

Our Ref: GP/B1010

Date: 14<sup>th</sup> August 2008



Mr B Gadman  
98 Pineview LN  
Coram  
New York  
11727 - 5113  
USA

Dear Mr Gadman,

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In the final paragraph of the Revenue's letter, the Inspector is asking about the benefit on an overdrawn loan account. As the only benefits declared by Mr Cagan's on his tax return are for living accommodation and a company car, I suspect that the Inspector believes that Mr Cagan may not have made a full return of all his assessable employment income.

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If you wish to discuss any aspect of this letter, please feel free to telephone.

Yours sincerely,

G Patrick  
Director of Tax Investigation and Support Services.

Exhibit 5 Page 2

Apsley House, 78 Wellington Street, Leeds, LS1 2JL

Tel. 0113 246 1234 Fax: 0113 242 3714 Email: [info@brownbutler.com](mailto:info@brownbutler.com) Website: [www.brownbutler.com](http://www.brownbutler.com)

PARTNERS: R M Bolton BA (Hons) FCA ATII - A. Grier ACA - D. Grove FCA - M M Dearnley FCA - B J Hornshaw ACA - J R White MA (Hons) ACA  
Consultants: T H Gurney FCA - D W Honney BSc FCA CP

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**CERTIFICATE OF SERVICE**

I certify that on 22 August 2008, I served a certified true copy of the foregoing EXHIBIT 1 THROUGH 5 SENTENCING MEMORANDUM AND MOTION TO POSTPONE on the following:

Chris Cardani  
U.S. Attorneys Office  
701 High Street  
Eugene, OR 97401

[ X ] by delivering said copy to the recipient,  
[ ] by U.S. Mail,  
[ ] by Certified U.S. Mail,  
[ ] by placing in recipient's box at the Court House

  
Marc A. Spence, OSB# 87349